

Material transmitted

HHS Personnel Instruction 792-2, Employee Assistance Program
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Exhibit 792-2-A, Consent for Release of Confidential Information
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Exhibit 792-2-C, Confidentiality Procedures (pages C-1-C-2)
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Exhibit 792-2-E, Model Job Rehabilitation Contract (page E-1)

Material superseded

HHS Personnel Instruction 792-2 (all)

Background

A significant proportion of the national workforce is experiencing personal problems which are serious enough to adversely affect job performance. This results in billions of dollars of lost productivity each year and has major adverse effects on the welfare of all Americans. In 1979, the Secretary announced the creation of a department-wide counseling program for employees whose alcohol, drug and emotional problems affect their ability to perform effectively at the job. The program would not only service HHS employees but be the model program for the entire Federal Government. HHS has maintained its commitment to this program, recognizing the enormous costs, both financial and human, of alcohol, drug, and emotional problems.

In 1982, the Assistant Secretary for Personnel Administration (ASPER) issued policy guidelines and procedures for the new Employee Counseling Services Program. In 1990, the policy was revised to more accurately reflect the kinds of services provided by the program. The instruction also changed the program's name to the Employee Assistance Program.

Since 1990, the Department has significantly restructured which has impacted the operation of this program. This instruction has been revised to reflect these changes.

This issuance is effective immediately. However, changes in conditions of employment for bargaining unit employees must be implemented consistent with labor relations responsibilities in 5 U.S.C. Chapter 71 and provisions of negotiated agreements.

Filing instructions

Remove superseded material and replace it with new material. Change Table of Contents (Instruction 002-1) for the Personnel Manual to reflect changes. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

Eugene Kinlow
Deputy Assistant Secretary for
Human Resources

Subject: EMPLOYEE ASSISTANCE PROGRAM

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792-2-00 PURPOSE, AUTHORITY AND RESPONSIBILITY

A. Purpose

This Instruction outlines the provisions of the Department's Employee Assistance Program (EAP). The EAP is a key piece of the human resource management strategy and is designed to prevent and address deficient employee work performance, conduct, attendance, reliability, or safety resulting from personal problems.

B. Authority

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 and the Drug Abuse Treatment Act of 1972 authorized Federal agencies to provide appropriate alcohol and drug services for civilian employees.

P.L. 79-658 also authorized heads of Departments to establish health service programs to promote and maintain the physical and mental fitness of employees.

Responsible office: Employee Assistance Program, Office of Human

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Resources, Assistant Secretary for Management
and Budget, HHS (202-690-8229)

In 1986, the Omnibus Drug Enforcement, Education, and Control Act was enacted. That law reiterated Congressional concern about the prevention of illegal drug use and the referral to treatment of Federal employees who use drugs. Also in 1986, Executive Order 12564 established further requirements for agencies and employees in order to obtain a drug free federal workplace. The EAP was given a major role in each of these.

C. Responsibility

Heads of Operating Divisions are responsible for establishing and operating EAPs that service all their employees and for supporting program objectives nationwide. Programs must, at a minimum, meet the standards described in this Instruction.

The Assistant Secretary for Management and Budget, through the Office of Human Resources, is responsible for oversight and coordination of the program Department-wide, policy and guideline development, and certain required reports and evaluations.

792-2-10 REFERENCES

- A. 5 U.S.C. 552a (law-Privacy Act of 1974 insures confidentiality of Federal records)
- B. 5 U.S.C. 7301 (law-established requirements for Federal agency drug free workplace plans)
- C. 5 U.S.C. 7361-7362 (law-development by OPM of programs for Federal employee drug abuse, and alcoholism/alcohol abuse, respectively)
- D. 5 U.S.C. 7901 (law-authorizes health programs for Federal employees)
- E. 5 U.S.C. 7904 (law-mandates agency EAPs for employee alcohol and drug abuse)
- F. 29 U.S.C. 791 (law-Rehabilitation Act of 1973 requires that agencies make reasonable accommodation for employees with known handicaps)
- G. Executive Order 12564 (mandated drug free Federal workplace)

- H. 42 CFR Part 2 (regulation-confidentiality of alcohol and drug abuse patient records)
- I. OPM Operating Manual, CSRS and FERS Handbook (formerly Federal Personnel Manual Supplement 830-1, disability retirement)
- J. HHS Personnel Instruction 297-1 (protection of privacy in personnel records systems)
- K. HHS Personnel Instruction 430-4 (performance management)
- L. HHS Plan for a Drug Free Workplace
- M. HHS Personnel Instruction 430-7 (HHS approved Performance Plan)
- N. HHS Personnel Instruction 630-1 (leave)
- O. 5 CFR 339 (medical qualifications)
- P. HHS Personnel Instruction 792-4 (HIV/AIDS in the workplace)
- Q. Understanding and Responding to Workplace Violence (HHS guidelines 1996)
- R. HHS EAP Quality Assurance Guidelines (1992)
- S. HHS Personnel Instruction 273-1 (Human Resources Assessment Program)

792-2-20 ELIGIBILITY AND COST

A. Eligibility. The EAP is available to all HHS employees, regardless of the nature of their personal problems; to supervisors and managers who need assistance in dealing with the performance and/or conduct of troubled employees or in dealing with interpersonal relationships in a work group; and to on-site contract employees on an emergency basis in order to stabilize the situation. Under the conditions described below, an employee's family member may also be seen.

1. When the family member has a problem that is connected with

the employee's alcohol or drug abuse, the family member may be seen by the EAP regardless of whether the employee is a client of the EAP. In these situations the family member is the client of the EAP and may receive all services.

2. When the employee has a personal problem that may be helped by the EAP seeing the family member or when the personal problem of the family member is affecting the employee's ability to function on the job, the family member may be seen by the EAP if the employee is a client of the EAP or if the intent is for the employee to become a client. In these situations, the employee is the program client and is the recipient of services.

3. A family member is defined as an employee's spouse and parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters, and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

B. Cost. There is no cost to employees, eligible family members, and supervisors for the EAP services. If an employee accepts a referral to an outside community resource, the employee is responsible for the cost of that treatment. The EAP will work with the employee to try to keep the cost within the employee's financial means.

792-2-30 REQUIRED CLIENT SERVICES

A. Services to individuals

1. Assessment--counseling sessions during which the nature and extent of the problem are determined; typically this activity takes 1-6 sessions but the best determinant of the number of sessions is always sound clinical judgment.

2. Referral--action to refer an employee to one or more community resources to receive services or treatment, as necessary.

3. Short-term problem solving--limited sessions with counselors to resolve problems that are not better resolved by a referral to a community resource; this activity is separate from the assessment process described above, although it is recognized the two activities may overlap; typically this activity takes no more than 4-6 sessions but the number of sessions must be based on sound clinical judgment.

4. Follow up--monitoring by counselors of employees' progress during and after treatment; the length and type of follow-up will be determined by the needs of the employees using the program.

5. Emergency referrals--twenty-four hour telephone referral service for emergency situations.

B. Services to supervisors/managers

1. Supervisory consultations--sessions between the EAP and a supervisor to discuss a potential supervisory referral, to assist a supervisor in dealing and communicating with a potential referral or current EAP client, or to follow up on a referred employee's progress.

2. Supervisory training and education--training programs for new supervisors so they know EAP procedures and how to identify, deal with, confront and refer troubled employees; and on-going education for all supervisors and managers on these issues.

3. Management consulting--consultations with managers to assess interpersonal issues affecting group performance, facilitate short-term intervention strategies or refer to other available resources (e.g., organizational development specialists).

C. Services to organizations

1. Violence prevention/crisis management--education of managers and employees on issues of workplace violence; assistance in conflict resolution; when

appropriate, involvement in agency crisis management teams.

2. Critical incident stress debriefing--a meeting or series of meetings held with witnesses, victims, or co-workers involved in a traumatic incident to gather facts and assist with their immediate emotional needs.

3. Group interventions--short-term interventions to aid work teams in dealing with interpersonal issues (e.g., conflict, communications) that interfere with individual and group performance.

4. Education programs--seminars, brown bag lunches, and other sessions periodically provided for all employees so that they become aware of the EAP services as well as the various personal problems that can affect job performance or conduct; orientation to the EAP for new employees and those needing a refresher.

5. Outreach--posters, fliers, bulletins and other techniques for reminding employees about the program's services.

6. Special services--provision of special services in response to work place issues such as outplacement, downsizing, substance abuse, and HIV/AIDS that fall within the professional purview of the EAP.

792-2-40 OTHER REQUIRED EAP RESPONSIBILITIES

A. Reporting and evaluation--routine reporting of quarterly data on program operations to the EAP Director in ASMB, data required for the annual OPM report, and special evaluations of program effectiveness.

B. Quality assurance--procedures for assessing and assuring the quality and appropriateness of its services conducted by each EAP unit; see the HHS EAP Quality Assurance Guidelines and Personnel Instruction 273-1 (Human Resources Assessment Program) for assistance in this area.

C. Other--special services required by the HHS Drug Free Workplace Plan; see section 792-2-80 for more details

792-2-50 LEAVE USAGE AND JOB SECURITY

A. Leave usage. Employees are on official duty when they meet with the EAP, provided they obtain consent from their supervisors. In an emergency, supervisor consent may be obtained after using the EAP. Confirmation of attendance will be provided by the EAP according to applicable confidentiality procedures. Employees who do not want their supervisors to know of their attendance must arrange appointments outside duty hours or on annual leave. Based on the availability of a counselor, sessions may be arranged during lunch periods, after work hours, or during periods of approved leave. Employees who are referred to community resources for treatment must request approved leave if these sessions occur during their scheduled work days.

B. Job security. Except for limitations for sensitive positions (as provided by Section 201 (c)(2) of P.L. 91-616 and Section 413 (c)(2) of P.L. 92-255 and limitations described in this section, an employee's job security or promotion opportunities will not be jeopardized solely for requesting counseling assistance from the EAP in connection with any personal problems. Individuals may be referred to the program by supervisors based on work performance or conduct deficiencies, but are not required to attend unless the referral is based on a positive drug test (under the Department's Drug Free Workplace Plan) or is required as part of a last chance agreement. Except in these limited situations refusal to accept a referral is not itself a reason for corrective action. However, if work performance or conduct does not improve, the refusal may be taken into account in any subsequent corrective actions.

792-2-60 CONFIDENTIALITY

A. General procedures

1. Authority. The EAP is required to provide for the confidentiality of all information in connection with an employee's use of the program in accordance with P.L. 98-24; 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records", revised June 9, 1987; the Privacy Act of 1974; and HHS Instruction 792-2.

2. Coverage. All records of the EAP, whether written or electronic and whether generated and maintained by contractors or in-house staff, are covered by this policy.

3. Access. Access to the EAP client records is limited to those individuals working directly with the program's clients. Additionally, EAP Administrators and EAP headquarters staff may have access to the EAP records for the purposes of:

- a. program oversight, evaluation, and quality assurance
- b. destroying EAP records at the end of their period of maintenance
- c. transferring them from one contractor to another

4. Record ownership. All EAP records are the property of this Department, including those generated and/or maintained by contractors. At the completion of any contract, EAP records will be surrendered to designated persons in HHS.

5. Relationship to state laws. 42 CFR Part 2 should not be construed to authorize any violation of state law, in the event that a state law has greater restrictions than these regulations. Also, no state law may either authorize or compel any disclosures prohibited by these regulations.

B. Releases of information

1. Disclosure with consent. Except where disclosure without consent is allowed (see paragraphs 2 and 3 below), the employee's written consent must be obtained before any release of information can be made. This applies to all releases, including those to supervisors, treatment facilities, and family members, without regard to the type of problem the individual is experiencing. A consent form meeting the requirements of 42 CFR Part 2 is found in HHS Exhibit 792-2-A. A consent form for obtaining confidential information is found in HHS Exhibit 792-2-B.

2. Disclosure without consent. Disclosure without consent is only permissible in a few specific instances such as to

medical personnel in a medical emergency, under certain court orders, and to comply with Executive Order 12564, "Drug Free Federal Workplace" (see section 792-2-80). The EAP may also confirm attendance at the program to a direct supervisor, if the employee attended while on official duty status or on sick leave, if requested. The EAP may also communicate with a qualified organization (such as a contractor) providing services to the program. The exchange is limited the information needed by the organization to provide required services.

3. Disclosures not covered by the regulations. In certain situations, information provided to the EAP is not protected by the confidentiality regulations and policies and, due to the nature of the information, must be reported to the appropriate people. The situations are:

- a. The EAP is required by law to report incidents of suspected child abuse and neglect (and in some states elder and spouse abuse and neglect) to the appropriate state and local authorities. However, other information on the employee maintained in the original EAP record is covered by these regulations and can only be released according to the procedures outlined in this policy.

- b. If the client commits or threatens to commit a crime that would physically harm someone or cause substantial property damage, disclosures may be made to appropriate persons, such as law enforcement authorities and those persons being threatened, but only if the disclosure does not identify the EAP client as an alcohol or drug abuser. The only exception is that if such a crime takes place at the EAP, the EAP can reveal only to law enforcement officers that a client is an alcohol or drug abuser, as long as the information disclosed under this exception is limited to the circumstances of the incident. Any other disclosure about the client may require a special court order.

4. Informing employees. Employees who use the EAP must be told about these confidentiality provisions and furnished a written summary. A sample summary that meets the requirements of 42 CFR Part 2 and the Privacy Act is included as HHS Exhibit 792-2-C.

5. Secondary disclosure. Any information disclosed with the employee's consent must be accompanied by a statement which prohibits further disclosure unless the consent expressly permits further disclosures. A sample form for this purpose that meets the requirements of 42 CFR Part 2 is found in HHS Exhibit 792-2-D. This shall be attached to any written information release or sent separately if the information was released orally. A duplicate shall be maintained for the employee's EAP file.

6. Releases of information to and from supervisors. Except as discussed above no information will be released to supervisors without the employee's written consent, regardless of the nature of the referral. The EAP will discuss the disclosure policies and forms with the employee, but the employee is not required to sign the forms.

- a. If the employee chooses not to sign the form, the EAP may not disclose any information to the supervisor, except whether or not the employee made or kept appointments during duty hours.
- b. When consent is given to disclose to a supervisor, the EAP will usually limit its discussion to: 1) attendance at the EAP; 2) cooperation with the program; 3) treatment plans that may interfere with the workplace; and 4) work performance or conduct issues.
- c. The information provided by the EAP should give the supervisor a general idea of the kind of progress an employee is making. The best indicator is always whether that person's job performance or conduct has improved.
- d. Although it is not required, it is a good practice for the supervisor to notify the EAP of any changes in work performance or conduct and any corrective actions taken because of the possible impact these decisions may have on the individual's treatment. Since this is not a release of information by the EAP but by the

supervisor, a release of information form does not apply.

C. Record keeping procedures related to confidentiality

1. Case coding. In order to insure confidentiality, all files shall be maintained by a case numbering system, rather than by name.

a. Each employee using the EAP will be assigned a unique number.

b. All case file materials shall be placed in a folder labeled with this unique case number.

c. A list of code numbers that correspond to the employees' names will be maintained in a locked file separate from the case folders. It shall be locked when not in use and shall be maintained by the EAP Administrator, a senior counselor, or the EAP's records custodian.

d. In addition to active and re-activated records, the case coding and filing systems shall include records which have been closed (but not yet destroyed).

2. File contents. To the extent possible, all recordings in case files shall not contain identifying information. It is recognized that identifying information may need to be entered in the files at times (such as consents for release of confidential information) but shall be kept to a minimum. All contacts regarding employees shall be recorded in their files, with the most recent information filed on top. Each entry shall only contain information necessary for handling the case. The EAP file contents shall never be part of or stored with the employee's Official Personnel Folder or Employee Medical File.

3. Family member files. Information on family members of employees who use the EAP shall be maintained in the file of the employee. The only exception is when the family member is the client of the EAP as described in 792-2-20.

4. Location and security of files. All case files will be kept in a locked metal filing cabinet preferably equipped with a combination padlock and steel lock bar. The cabinet shall be locked when not in use. All persons having access to the files shall have previous training in the proper handling of records covered by 42 CFR Part 2. The file cabinet shall not contain the records of other HHS programs or departments. The locked file cabinet shall be secured by the last EAP staff member leaving the office each day.

5. Electronic record keeping. The same confidentiality safeguards shall be taken when records are stored electronically. EAP data systems shall be protected from entry by anyone outside the EAP.

6. Period of maintenance. Records are retained until three years after the employee has ceased contact with the EAP, whether or not the employee has terminated employment with HHS, longer if required by the state where the records are kept, or until any litigation involving the employee is resolved. When applicable, contract staff may retain records past this period, for as long as any relevant state statutes of limitation require.

7. File destruction. Files will be destroyed only by the EAP Administrator, with a witness present, and only after the required period of maintenance. The witness must be an HHS employee familiar with handling confidential records and, whenever possible, another EAP staff member. This includes electronic deletions. The written files will be destroyed by shredding or burning. Records located away from the EAP Administrator's site shall be transferred to the EAP Administrator in the confidential manner required by HHS and GSA policies. The name of the employees whose EAP records were destroyed shall be added to a record of former EAP participants. This list shall be kept with the case coding number record and the same confidentiality procedures apply. No other information about clients may be maintained once their files have been destroyed.

792-2-70 STAFF QUALIFICATIONS AND REQUIREMENTS

- A. EAP counselors providing services to individuals. EAP staff who provide services to individuals (as outlined in section 792-2-30A) must have a mental health related degree and be licensed and certified according to the laws and regulations of the state where they are employed. Recent graduates who do not meet practice requirements for licensure or certification must work under the direct supervision of a qualified practitioner. Appropriate licenses and certifications must be obtained within two (2) years of graduation. Interns must be in training at the graduate level and be closely supervised by a licensed practitioner.
- B. Substance abuse services. EAP staff providing services to individuals, supervisors and organizations about substance abuse must have demonstrated proficiency in this area or be certified in this area by local or state governments or another recognized certification board.
- C. Services to organizations. EAP staff providing services to organizations (as described in section 792-2-30) must have certification or demonstrated proficiency in the area of the service (such as critical incident stress debriefings).
- D. Other staffing requirements
 - 1. Staffing ratio. The minimum required staffing pattern is one full time counselor per 3,500 employees in the target population. Exceptions to this requirement may be granted by the EAP Administrator or headquarters staff, when there is sound justification.
 - 2. Liability insurance. All contract staff, regardless of position, must have liability insurance coverage.
 - 3. Clinical evaluations. Any staff performing quality assurance and evaluation EAP tasks that are strictly clinical in nature (such as assessment, treatment planning and referral) must meet all the requirements found in sections A, B, and C above or obtain outside clinical expertise.

792-2-80 INTEGRATION OF EAP WITH HHS DRUG FREE WORKPLACE PLAN

In response to Executive Order 12564 and its implementing legislation (Public Law 100-71), HHS developed the Drug Free Workplace Plan to set forth the objectives, policies, procedures and implementation guidelines necessary to achieve a workplace free of illegal drugs. The program is under the auspices of the HHS Drug Program Coordinator. The EAP was given responsibility in several program areas which are described below.

A. Employee assistance. The overall objective of the EAP in relation to the Drug Free Workplace Plan is to assist supervisors and managers in dealing with the consequences of their employees' illegal drug use and to assist employees in their efforts to overcome current drug use and refrain from future use.

B. Job Rehabilitation Contract. The EAP shall develop a Job Rehabilitation Contract for each employee referred to the EAP as a result of a verified positive drug test or each employee under the provisions of Safe Harbor. The purpose of this contract is to insure that the supervisor, the EAP, the employee and the union representative (if requested by a bargaining unit employee) are in agreement regarding the steps to be taken as part of the EAP/rehabilitation process and after counseling or treatment has been completed. It must be developed in accordance with the requirements of the HHS Drug Free Workplace Plan. A model contract is found in HHS Exhibit 792-2-E.

C. Safe Harbor. In addition to the referral methods discussed above, employees may also self-refer to the EAP under the Safe Harbor provision in the HHS Drug Free Workplace Plan. This provision protects an employee from disciplinary actions that may be taken against an employee found to be using drugs illegally. These employees must voluntarily admit the drug use before being identified through other means, must complete counseling/rehabilitation as determined and monitored by the EAP, and must not use drugs again. A Job Rehabilitation Contract must be completed as noted under B. above. The Safe Harbor provision cannot protect employees from disciplinary actions or random testing if they refuse to notify their supervisors that they are seeking help for their drug problems. It also cannot protect employees who have been found to use drugs illegally a second time.

D. Employee education and supervisor training. The EAP will assist the Drug Program Coordinator and training officers with the provision of on-going drug education for employees and supervisors.

E. Drug testing. The HHS Drug Free Workplace Plan includes provisions for the testing of employees for illegal drug use. The EAP shall not be responsible for the implementation or operation of the drug testing program, but will provide counseling and assistance described below.

1. The MRO shall notify the EAP of positive test results and will coordinate with the EAP to inform the employee's immediate supervisor of the result.
2. The EAP shall then perform its normal functions of counseling and assisting employees and supervisors (described in this Instruction) in dealing with the drug problem.
3. Those job applicants from outside of HHS who receive positive test results are entitled to and will be offered assistance from the EAP. This assistance will be limited to providing information on the availability of community treatment and rehabilitation services.

-SAMPLE-
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Employee Assistance Program

Consent for Release of Confidential Information

1. I _____ authorize:
2. the HHS Employee Assistance Program
3. to disclose:(kind and amount of information to be disclosed)

4. to: _____
(name or title of person/organization to which disclosure is made)
5. for:(purpose of disclosure) _____

6. Date consent signed: _____
7. _____
(signature of client)
8. _____
(signature of parent or guardian where required)
9. _____
(signature of person authorized to sign in lieu of client where required)
10. This consent is subject to revocation at any time except to the extent that the EAP has already taken action in reliance on it. If not previously revoked, this consent will terminate upon: _____
(specific date, event, or condition)

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-SAMPLE-

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Employee Assistance Program

Consent for Obtaining Confidential Information

1. I _____ authorize:
2. _____
(name or title of person/organization from which information
is requested)
3. to disclose to the HHS Employee Assistance Program
4. the following information: _____

5. for the purpose of: _____

6. Date consent signed: _____
7. _____
(signature of client)
8. _____
(signature of parent or guardian where required)
9. _____
(signature of person authorized to sign in lieu of client
where required)
10. This consent is subject to revocation at any time except to
the extent that the EAP has already taken action in reliance
on it. If not previously revoked, this consent will terminate
upon: _____
(specific date, event, or condition)

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-SAMPLE-

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Employee Assistance Program
Confidentiality Procedures

We know it is a difficult decision to see an EAP counselor for the first time. Employees are sometimes concerned about the privacy of what they say. We would like to assure you that your EAP record is confidential and explain some of the laws and regulations that protect it. Your EAP counselors are committed to upholding the highest professional standards in maintaining your privacy.

The principal purpose of maintaining information about you is to document your assessment, intervention and follow-up activities. The information provided by you is voluntary.

The Privacy Act covers all EAP records. In addition, EAP records of clients with alcohol and drug problems are subject to extra restrictions described in the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations. Generally, these laws and regulations prohibit EAP staff from sharing any information about you outside the EAP.

There are some situations, however, when information about you can be released. We are required by law and regulation to inform you about these situations. We can disclose information:

1. when you consent to it in writing.
2. when it is allowed by a court order.
3. when it is made to medical personnel in a medical emergency or when the disclosure is made in a non-identifiable form to qualified personnel for research, audit or program evaluation.
4. to a private firm, individual, or group providing EAP functions contractually. The contractor shall be required to maintain all confidentiality safeguards and surrender these records to the EAP Administrator at the time of contract termination.

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5. to the Department of Justice for defending HHS and/or its employees in litigation. Records that do not involve alcohol or drug abuse may also be disclosed to a court or another party before the court for this purpose. This is further described in the current System of Records Notice. These disclosures must comply with all other aspects of these regulations and be approved by the EAP headquarters staff.
6. when your direct supervisor needs to confirm that you have made or kept EAP appointments during regular duty hours or sick leave (no other information will be given without proper consent).
7. if you are tested and receive a verified positive drug test result (under the Drug Free Workplace Program), in which case your direct supervisor must be informed.
8. if you commit a crime at the EAP or against any person who works for the EAP or threaten to commit such a crime. Federal laws and regulations do not protect any information about the crime or threat. Information on crimes that may harm other persons or cause substantial property damage is also not protected, as long as the EAP does not identify you as an alcohol or drug abuser.
9. if you provide any information which would lead us to suspect child abuse or neglect (or in some states elder and spouse abuse). In these cases, we are required to report that information under State law to appropriate State or local authorities.

The authority for maintenance of your record is 5 U.S.C. 7361, 7362, 7901, 7904, and 44 U.S.C. 3101. See also HHS Personnel Instruction 792-2. Violation of the Federal laws and regulations by the EAP is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations.

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-SAMPLE-

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Employee Assistance Program

Secondary Disclosure Prohibition

1. Subject: Release of Confidential Information
2. From: HHS Employee Assistance Program
3. To: _____
(name/title of the person/organization to which disclosure is made)
4. Date: _____
5. In accordance with Federal laws and regulations, we have released information to you on _____. We are required to inform you that this information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any client.

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
EMPLOYEE ASSISTANCE PROGRAM
MODEL JOB REHABILITATION CONTRACT**

EAP Job Rehabilitation Contracts must be developed in accordance with the requirements listed in Section III.F. of the HHS Drug-Free Workplace Plan. They must also be developed consistent with the provisions of negotiated labor agreements.

I, in consideration for my participation in the Department's Employee Assistance Program, agree to the following provisions of this contract:

1. As a result of a verified positive drug test indicating illegal drug use, I accept referral to the HHS (Component's Name) Employee Assistance Program.
2. I agree to fully participate in an assessment conducted by the EAP, and I further agree to participate in short-term counseling with the EAP and/or accept a referral for treatment and rehabilitation, if recommended.
3. I agree to execute all necessary Release of Information forms, to allow only the EAP to obtain information on my progress while in treatment.
4. I agree to provide the EAP with the dates and times of my rehabilitation appointments and with explanations of any absences from these appointments.
5. I understand that two (2) unexcused absences will result in my having to make an appointment within three (3) working days with the EAP for re-evaluation, and in notification to my supervisor, and may result in disciplinary, administrative and/or adverse actions as a result of my failure to comply with this agreement.
6. I agree to the following treatment and rehabilitation plan (to be completed by the EAP, if applicable):

7. I understand that the treatment (if applicable) and rehabilitation outlined in this contract will cover a period not to exceed _____ (date) _____.

8. I understand that the following administrative and/or disciplinary actions will be initiated by my supervisor and/or higher-level supervisors as a result of my verified positive drug test result (delete if not applicable).

9. I further understand that implementation of these actions will be postponed or otherwise modified while I am undergoing treatment and rehabilitation as noted below.

(#8 and 9 to be completed by the EAP in consultation with the supervisor and employee relations specialist)

10. I understand that, notwithstanding the provisions of #9 above, I may be subject to other disciplinary or administrative actions for performance or conduct problems that occur during the period that I am under treatment and/or rehabilitation.

11. I understand that if I am in a sensitive position, I will be removed administratively from sensitive duties (unless the Secretary specifically restores them) at least until I successfully complete the treatment and rehabilitation outlined in #6 and 7 above. As an employee in a sensitive position, I also understand that if I am under the provisions of Safe Harbor all administrative actions will be canceled if I successfully complete treatment and rehabilitation.

12. I understand that I will be exempt from the HHS random drug testing program during the period cited in #7 above while I am undergoing treatment and rehabilitation. I further understand that at the end of this period I will be returned to the testing pool. (delete if employee is not in random pool)

13.I understand that I am required to complete my treatment and rehabilitation program successfully. I understand that I will have done this if I do the following:

(to be completed by the EAP in conjunction with the treatment specialist)

14.I understand that non-compliance with this contract, including refusal to cooperate with the treatment and rehabilitation program, may result in disciplinary or administrative actions against me. Indications of non-compliance include, but are not limited to:

15.I understand that treatment and/or rehabilitation providers may require drug testing in order to monitor my progress, but that such tests are not part of the Department's drug testing program. A positive test result as part of the treatment/rehabilitation program can only subject me to disciplinary action if it is considered evidence of non-cooperation as noted in #13 above.

16.I understand that following the treatment and rehabilitation period cited in #6 and 7 above, I will be subject to a year of follow-up testing under the Department's Drug-Free Workplace program. A verified positive test result during this follow-up year or at any time thereafter will result in the initiation of action to remove me from Federal service.

17.I understand that the EAP is required to provide my supervisor with regular progress reports regarding my adherence to this contract, but that information regarding the nature of my treatment condition, my treatment, and any other related information will not be disclosed outside the EAP without my specific written permission. The reports to be provided will include the following information and be provided according to the following schedule.

(to be completed by the EAP)

18.I understand that as a result of my successful completion of this contract, the following administrative and/or disciplinary actions may be canceled:

(to be completed by the EAP in conjunction with the supervisor and employee relations specialist)

The undersigned hereby agree to and adopt the provisions of this contract.

Employee

Immediate Supervisor

EAP Representative

Higher-Level Supervisor

Union Representative
(if requested by bargain-
ing unit employee)

Date